

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 1 - NEW ENGLAND

IN THE MATTER OF:

Peterson/Puritan, Inc. Superfund Site

Cumberland, Rhode Island

Providence and Worcester Railroad
Company

Respondent

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT

U.S. EPA New England
CERCLA Docket No. 01-2012-0010

Proceeding Under Sections 104, 107, and
122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§ 9604, 9607 and 9622.

Superfund Records Center

SITE: Peterson/Puritan AZ

BREAK: 10-07

OTHER: 448396



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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into by the United States Environmental Protection Agency ("EPA") and the Providence and Worcester Railroad Company ("Respondent"). This Settlement Agreement provides for the performance of an investigation by Respondent of its right-of-way located east of the J.M. Mills Landfill ("Second Track") area of Operable Unit Two of the Peterson/Puritan, Inc. Superfund Site ("Site") in Cumberland, Rhode Island, as set forth in the Statement of Work attached to and incorporated by reference as Appendix A.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of Rhode Island (the "State") of this action pursuant to Section 104(b)(2) of CERCLA, 42 U.S.C. § 9604(b)(2).

4. EPA has notified the Federal Natural Resource Trustees of this action pursuant to Section 104(b)(2) of CERCLA, 42 U.S.C. § 9604(b)(2).

5. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law, determinations or statements in this Settlement Agreement or submissions made pursuant thereto, and denies any liability or violation of law. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

7. Respondent is jointly and severally liable for carrying out all activities required by this Settlement Agreement.

8. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objective of EPA and Respondent is the performance of the investigation identified in the Statement of Work attached to this Settlement Agreement as Appendix A. It is further understood by the parties that the data collected in the performance of the aforementioned investigation shall be considered by EPA, if available, as a factor to be considered in the: 1) evaluation of the viability of the Respondent's proposed Second Track, in particular with respect to the already-underway Site remediation; 2) analysis of the proposed Second Track's potential risk to human health or the environment; and 3) analysis of any potential modification of the proposed Site remediation that would occur as a result of the construction of Respondent's proposed Second Track.

IV. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendix attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXVII.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Existing Track" shall mean Respondent's current high speed rail line that runs immediately parallel to the J.M. Mills Landfill and through the Peterson/Puritan, Inc. Superfund Site.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise

implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 34 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 44 (emergency response) or Paragraph 64 (work takeover).

g. "J. M. Mills Landfill" or "Landfill" shall mean the landfill that operated on and/or adjacent to Respondent's property during the period from 1954 to 1986. The Landfill is bounded to the west by the Blackstone River and to the east by Respondent's Existing Track.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean EPA and Respondent.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Respondent" shall mean Providence and Worcester Railroad Company.

n. "RIDEM" shall mean the Rhode Island Department of Environmental Management and any successor departments or agencies of the State.

o. "Second Track" shall mean the right-of-way (ROW) properties owned by Respondent located within the Peterson/Puritan, Inc. Superfund Site, in Cumberland, Rhode Island (Plat 13, Lot 28; Plat 15, Lot 91; Plat 34, Lot 222; and Plat 14, Lot 6). Respondent's proposed Second Track is immediately parallel to the J.M. Mills Landfill, is approximately 7,500 feet, planned to be constructed in Cumberland, RI between Martin Street (to the north) and Mendon Road (to the south), and planned to be used as rail siding. The location of Respondent's proposed Second Track is parallel to and west of Respondent's Existing Track, to be placed in between the Existing Track and the Landfill. The existing track also abuts a wetland to the east, and is fully on the 50-year floodplain of the Blackstone River.

p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and any appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

r. "Site" shall mean the Peterson/Puritan, Inc. Superfund Site, consisting of two operable units ("OUs") and a potential OU 3 area and totaling over two linear miles of mixed industrial/commercial/residential property located along the Blackstone River in the towns of Cumberland and Lincoln, Rhode Island. The Site includes, but is not limited, the J.M. Mills Landfill, the Nunes Transfer Station, the Unnamed Island, the Existing Track, and the Second Track.

s. "State" shall mean the State of Rhode Island.

t. "Statement of Work" or "SOW" shall mean the statement of work set forth in Appendix A to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

u. "United States" shall mean the United States of America including its departments, agencies and instrumentalities.

v. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

w. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

V. EPA'S FINDINGS OF FACT

Respondent

11. By a letter dated November 30, 1993, EPA notified Respondent of its status as a potentially responsible party ("PRP"), a former owner/operator of a facility at the Site at the time of disposal of hazardous substances at the Site.

12. By a letter dated January 29, 2002, EPA notified Respondent of its status as a PRP, as both a current or former owner/operator of the Site where the hazardous substances are located.

13. By a letter dated December 15, 2003, EPA notified Respondent of its status as a PRP, as a party that accepted hazardous substances for transport to disposal or treatment facilities, and selected the Site for disposal.

Site Description

14. The Peterson/Puritan, Inc. Superfund Site consists of two operable units ("OUs") and a potential OU 3 area totaling over two linear miles of mixed industrial/commercial/residential property. The Site is located along the Blackstone River and includes a portion of the Blackstone River Valley National Heritage Corridor. The Site is located in the towns of Cumberland and Lincoln, in the north-central corner of Rhode Island. The Site is surrounded by industrial, residential, and semi-rural properties. An aerial Site map with the approximate location of the parcels to which this Order pertains is attached as Appendix B.

15. The Site contains many different parcels. Among the most contaminated parcels is the J. M. Mills Landfill located within the Site. The J. M. Mills Landfill accepted mixed municipal and industrial waste from 1954 through 1986. It is bound on the west by the Blackstone River and to the east by Respondent's Existing Track, a portion of which runs through OU2. Respondent's proposed location of its Second Track is parallel to its Existing Track, in between the J.M. Mills Landfill slope and the Existing Track.

Site History

16. On September 8, 1983, EPA included the Site on the Superfund National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

17. EPA conducted a removal action on the OU 2 Area in 1992, which involved construction of a fence around the former J. M. Mills Landfill and the removal of drums containing contaminated materials from the base of the landfill. In November 1997, a second removal action was conducted at the landfill, which included the disposal of asbestos containing wastes found outside of the fenced-in area. The security fence, which had previously been erected by EPA as part of its response actions in 1992, was extended to limit further dumping and restrict access to the OU 2 Area.

18. Pursuant to the terms of the AOC, the OU 2 PRP Group is under an obligation to pay for and perform the RI/FS for OU 2. As part of the RI, the OU 2 PRP Group has, among other actions, characterized the Site conditions, determined the nature of the waste and the extent of contaminant migration, assessed the risk to human health and the environment, and conducted treatability testing to evaluate the potential performance and cost of the treatment technologies that are being considered. As part of the FS, the OU 2 PRP Group is currently, among other actions, developing and evaluating various cleanup alternatives and developing a proposed plan

for the cleanup of the OU 2 Area. The remedial plan for OU 2 is likely to include reconfiguration, consolidation and capping the entire Landfill and Nunes Parcel, at a minimum, and also will likely include a clean corridor along the toe of the slope to provide the subsurface termination of the hazardous waste cap(s), construction of storm water drains and collection basins (sized appropriately in design for managing storm water runoff and mitigating erosion of the cap(s)), condensate collection basins for landfill gas operations (if required by design studies), and providing a managed corridor that will allow unconditional access for the operation and management of the landfill infrastructure. This clean corridor in whole is routinely dependent upon design but may be estimated at 20-40 feet in width and running parallel to the toe of slope of the constructed Superfund landfill cap(s). Institutional controls that protect the integrity of the landfill cap(s) will likely be placed on the property. Such institutional controls would likely prohibit the use, or alteration, of groundwater at OU 2.

19. The response actions taken at the Site and planned for the Site include, but are not limited to, those actions that have been taken to investigate the contamination at the OU 2 Area and determine an appropriate remedy for OU 2, are necessary to abate the potential danger to public health and/or the environment posed by the release or threat of release of hazardous substances at the Site. Samples taken from the Site indicate the presence of volatile organic contaminants (including, but not limited to, trichloroethylene, freon 11, 1,2-dichloroethene, 1,1,1-trichloroethane, benzene) and also chromium, nickel, and lead in the groundwater. Contaminants found in the soil and sediment include benzo(a)pyrene, chrysene, indeno(1,2,3-cd)pyrene, bis(2-ethylhexyl)phthalate, aroclors, and asbestos insulation/transite. In addition, soil samples along the Blackstone River have been found to be contaminated with polychlorinated biphenyls, polyaromatic hydrocarbons, and heavy metals. All of these are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). These hazardous substances were disposed of at the Site. All or some of these hazardous substances have been released or are threatened to be released at the OU 1 Area and the OU 2 Area.

20. Along the base of the Landfill, running parallel to the proposed Second Track, is a security fence installed pursuant to an EPA removal action for the purpose of limiting access and reducing human health risks until EPA completes its remedial activities. Also, located in this immediate area, running parallel to the fence, are approximately 17 monitoring wells.

VI. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

21. Based on the Findings of Fact set forth above, EPA has determined that:

a. The Site, including Respondent's property, is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Sections 104, 107(a) and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607(a) and 9622.

e. The conditions described in Paragraph 19 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. It is necessary and appropriate to conduct the investigation which is required by this Settlement Agreement, in order to determine whether Respondent's proposed Second Track can be installed without interfering with EPA's remedial activities at the J.M. Mills Landfill.

VII. SETTLEMENT AGREEMENT AND ORDER

WHEREAS, based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby ORDERED and AGREED that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTOR AND PROJECT COORDINATORS

22. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within seven (7) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualifications of any other contractor(s) or subcontractor(s) retained to perform the Work at least seven (7) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within five (5) days of retaining an alternative contractor.

23. Within seven (7) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of

the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within five (5) days of retaining an alternative designated Project Coordinator. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

24. EPA has designated David J. Newton of the Office of Site Remediation and Restoration, Region 1, as its Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the Project Coordinator at EPA-New England, Region 1, 5 Post Office Square, Suite 100, Mail Code OSRR07-1, Boston, Massachusetts 02109-3912.

25. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

26. EPA and Respondent shall have the right, subject to Paragraph 23, to change their respective designated Project Coordinators. Respondent shall notify EPA five (5) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

IX. WORK TO BE PERFORMED

27. Respondent shall perform the tasks identified in the Statement of Work, which is attached to this Settlement Agreement as Appendix A. The Statement of Work provides for, among other actions, the performance of an investigation to collect and analyze soil samples from the Second Track area of the Site.

28. Respondent shall conduct the Work in accordance with the provisions of this Settlement Agreement, the Statement of Work, CERCLA, the NCP and EPA guidance, as may be amended or modified by EPA.

29. **Quality Assurance and Sampling.**

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as

appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze one set of samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

30. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every thirtieth (30th) day after the Effective Date until completion of the Statement of Work under this Settlement Agreement, unless otherwise directed in writing by the EPA Project Coordinator. These reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during the relevant time period; (2) include all results of sampling, tests, modeling or other data (including raw data) generated by Respondent or on Respondent's behalf; and (3) include a schedule of actions to be performed. Respondent shall comply with any additional reporting requirements set forth in the Statement of Work attached to this Settlement Agreement as Appendix A.

b. Respondent shall submit four (4) copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

31. Final Report.

Within forty five (45) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing

the actions taken to comply with this Settlement Agreement. The final report shall include (1) a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement; (2) copies of all tables, evaluations, reports, assessments and other documents prepared in performance of the Work; (3) a listing of quantities and types of materials removed off-Site or handled on-Site, if any, a discussion of removal and disposal options considered for those materials, and a listing of the ultimate destination(s) of those materials; (4) a presentation of the analytical results of all sampling and analyses performed; and (5) copies of all other relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

32. Consistent with the Statement of Work attached as Appendix A, Respondent may request that it discontinue the Work before it is completed and give notice of the reasons for stopping the Work. EPA, after review and comment by RIDEM, shall permit the Respondent to stop the Work. EPA's decision, after review and comment by RIDEM, to stop the Work will be based on a determination that the area of the Site where the Work was performed is stable and that stopping the Work will not result in further migration of contaminants or create an imminent or substantial endangerment at the Site. If the parties agree to stop the Work, then Respondent will provide EPA with all of the data obtained from the Work performed in accordance with this Settlement Agreement, but Respondent will not be obligated to prepare a Final Report.

33. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for any work that will include off-Site shipments. Respondent shall provide the information required by Paragraphs 32(a) and (b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances from the Site to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

X. SITE ACCESS

34. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

35. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use best efforts to obtain all necessary access agreements within fourteen (14) days after the Effective Date, or at a later date as specified in writing by the EPA Project Coordinator. Respondent shall immediately notify EPA if after using best efforts it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. EPA reserves the right to bring an action to recover any costs and attorney's fees incurred in obtaining such access, in accordance with Section XIX (Reservation of Rights by EPA). For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access.

36. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. ACCESS TO INFORMATION

37. Respondent shall provide to EPA, upon request, copies of all non-privileged documents and information within its possession or control or that of its contractors or agents relating to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample

traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

38. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

39. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no final documents, reports or other information submitted pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

40. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XII. RECORD RETENTION

41. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXV (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXV (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

42. Prior to the conclusion of this document retention period, and upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no final documents, reports or other information submitted pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

43. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. COMPLIANCE WITH OTHER LAWS

44. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

45. In the event of any action or occurrence during performance of the Work which causes or threatens a release of a hazardous substance from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator or, in the event of his unavailability, and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to bring an action to recover such costs, in accordance with Section XIX (Reservation of Rights by EPA).

46. Respondent shall submit a written report to EPA within seven (7) days after any such release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XV. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. EPA and Respondent shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

48. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, it shall notify EPA in writing of its objections within seven (7) days of such action, unless the objection has been resolved informally. EPA and Respondent shall have fourteen (14) days from EPA's receipt of Respondent's written objection to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended upon agreement by EPA and Respondent.

49. Any agreement reached by EPA and Respondent pursuant to this Section shall be in writing and shall, upon signature by both EPA and Respondent, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Respondent are unable to reach an agreement within the Negotiation Period, Respondent or EPA may, by providing notice in writing, request the employment of a neutral mediator to be selected in accordance with EPA guidance on the use of Alternative Dispute Resolution. Respondent and EPA shall, in the first instance, consider employing EPA's in house mediator. Such mediation shall be non-binding and shall not last longer than 30 days from the date of selection of the mediator unless extended by written agreement of EPA and Respondent. If neither party requests mediation, or the dispute is not resolved at the end of the mediation period, an EPA management official at the branch chief level or higher will issue a written decision on the dispute to Respondent. If Respondent and EPA agree to change any EPA action or no agreement is reached and EPA issues its final position on the dispute, Respondent shall begin to implement the activities required by the EPA decision no later than 15 days after agreement is reached or after receipt of EPA's final position.

XVI. FORCE MAJEURE

50. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which

delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

51. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within seven (7) days of when Respondent first knew that the event would likely cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment.

52. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. Upon receipt of the notice from EPA, Respondent shall have an opportunity to pursue Dispute Resolution according to Section XV of this Settlement Agreement. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension for performance of the obligations affected by the *force majeure* event.

XVII. STIPULATED PENALTIES

53. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 53 and 54 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVI (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities required under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement in accordance with all applicable requirements of law, this Settlement Agreement, the Statement of Work, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

54. Stipulated Penalty Amounts - Work

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the milestones identified in Paragraph 53(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$250	15th through 30th day
\$500	31st day and beyond

b. Compliance Milestones: Any deadlines for Commencing Work, and Completing Work, as specified in the Statement of Work attached to this Settlement Agreement as Appendix A.

55. Stipulated Penalty Amounts - Reports

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to any requirements set forth in the Statement of Work attached to this Settlement Agreement as Appendix A:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$250	15th through 30th day
\$500	31st day and beyond

56. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section IX (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to an agreement reached or a final position issued pursuant to Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that an agreement is reached or a final position is issued regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

57. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA shall give Respondent written notification of the failure and describe the noncompliance without unreasonable delay. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

58. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Superfund Payment Box, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 0140, the EPA Docket Number, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to Michelle Lauterback, EPA Senior Enforcement Counsel, EPA-New England, Region 1, 5 Post Office Square, Suite 100, Mail Code OES04-4, Boston, Massachusetts 02109-3912.

59. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

60. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's final position.

61. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the, unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 55. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVIII. COVENANT NOT TO SUE BY EPA

62. In consideration of the actions that will be performed by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete performance by Respondent of all obligations required under this

Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

63. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

64. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by EPA at the Site;
- c. liability for performance of response actions other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

65. Work Takeover. In the event EPA determines that Respondent has ceased to perform any Work required under this Settlement Agreement, is seriously or repeatedly deficient or late in its performance of that Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. EPA reserves the right to bring an

action to recover any costs incurred by the United States in performing the Work pursuant to this Paragraph, in accordance with Section XIX (Reservation of Rights by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY RESPONDENT

66. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or this Settlement Agreement, except that Respondent specifically reserves any and all claims under Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), against the United States Department of the Navy and the United States Department of the Air Force in connection with the Work or this Settlement Agreement.

67. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 63(b), (c), and (e) – (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

68. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. OTHER CLAIMS

69. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into

by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

70. Except as expressly provided in Section XVIII (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

71. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. CONTRIBUTION

72. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work.

73. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work.

74. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIII. INDEMNIFICATION

75. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition,

Respondent agrees to pay the United States all costs incurred by the United States, including, but not limited to, reasonable attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any contractor shall be considered an agent of the United States.

76. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

77. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work pursuant to this Settlement Agreement, including, but not limited to, claims on account of construction delays.

XXIV. MODIFICATIONS

78. The EPA Project Coordinator and Respondent may make mutually agreed upon modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any mutually agreed upon oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

79. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to Paragraph 77.

80. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain

any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXV. NOTICE OF COMPLETION OF WORK

81. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA shall notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Respondent may invoke the Dispute Resolution procedures in Section XV, within seven (7) days of receipt of such EPA notice. Respondent shall correct any deficiencies in accordance with the EPA notice. Failure by Respondent to correct any deficiencies shall be a violation of this Settlement Agreement.

XXVI. SEVERABILITY/INTEGRATION/APPENDICES

82. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

83. This Settlement Agreement and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XXVII. EFFECTIVE DATE

84. This Settlement Agreement shall be effective one (1) day after the Settlement Agreement is signed by the Director, Office of Site Remediation and Restoration.

Peterson/Puritan, Inc. Superfund Site AOC
Providence and Worcester Railroad Company
CERCLA Docket No. 01-2012-0010

It is so ORDERED and Agreed this 18th day of January 2012.

BY: James T. Owens, III
James T. Owens, III
Director, Office of Site Remediation and Restoration
Region 1
U.S. Environmental Protection Agency

EFFECTIVE DATE: JAN 19 2012

Peterson/Puritan, Inc. Superfund Site AOC
Providence and Worcester Railroad Company
CERCLA Docket No. 01-2012-0010

The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties it represent(s) to this document.

Agreed this 11th day of January, 2012.
For Respondent PROVIDENCE AND WORCESTER
RAILROAD COMPANY
By [Signature]
P. Scott Conti
Title President